

### **REMARKS**

The Applicants have carefully considered the official action dated March 13, 2009. In view of the following remarks, the Applicants respectfully traverse the rejections and submit that all claims are in condition for allowance. Favorable reconsideration is respectfully requested.

#### **I. The Rejections under 35 USC § 112**

In the official action, claims 1-11, 15-23, and 26-32 were rejected under 35 USC § 112, first paragraph, as failing to comply with the written description requirement. In particular, each of independent claims 1, 15, and 26 recites "...provisioning..., without manual intervention...", and the official action suggests that there is no support for a lack of manual intervention.

The Applicants respectfully submit that claims 1-11, 15-23, and 26-32 comply with 35 USC § 112, first paragraph. The written description of an application complies with § 112, first paragraph, when it reasonably conveys to one of ordinary skill that the inventors had possession at the time of the later claimed subject matter. MPEP § 2163.02 (citing *Ralston Purina Co. v. Far-Mar-Co., Inc.*, 772 F.2d 1570, 1575 (Fed. Cir. 1985)). "While there is no *in haec verba* requirement, newly added claim limitations must be supported in the specification through express, implicit, or inherent disclosure." MPEP § 2163(I)(B) (New or Amended Claims). Further, "the subject matter of the claim need not be described literally ... in order for the disclosure to satisfy the written description requirement." MPEP § 2163.02. For at least the reasons discussed below, the Applicants respectfully submit that all pending claims comply with § 112, first paragraph.

The Applicants respectfully submit that support for "...provisioning..., without manual intervention..." can be found in the subject application as originally filed at least at paragraph 34. In particular, paragraph 34 states:

An illustrative method detailing the provisioning and maintenance of network circuits in a data network is presented in U.S. patent application Ser. No. 10/348,592, entitled "Method And System For Provisioning And Maintaining A Circuit In A Data Network," filed on Jan. 23, 2003, and assigned to the same assignee as this application, which is expressly incorporated herein by reference.

Applicants' Specification, ¶ [0034].

Patent application serial number 10/348,592 filed prior to the subject application and expressly incorporated by reference describes "...provisioning a circuit in a data network without manual intervention." U.S. Application Serial No. 10/348,592, Abstract. Accordingly, the Applicants respectfully submit that claims 1-11, 15-23, and 26-32 comply with 35 USC § 112, first paragraph, and respectfully request withdrawal of the § 112 rejections therefrom. Removal of the § 112 rejections is requested to place this application in better condition for appeal.

If necessary, the Applicants can amend the specification of this application to incorporate the portions of U.S. Application Serial No. 10/348,592 directed to provisioning a circuit in a data network without manual intervention.

## **II. The Rejections under 35 USC § 103**

In the official action, claims 1-11, 15-23, and 26-32 were rejected under 35 USC § 103 as unpatentable over Sibbitt et al. (US 5,065,392) in view of one or more of Wilkes (US 5,539,817), Hollman et al. (US 7,146,000), Chiu et al. (US 6,597,689), and Naven et al. (US 6,810,043).

**A. Independent Claim 1**

The Applicants respectfully submit that independent claim 1 is allowable over the combination of Sibbitt et al. and Wilkes. Independent claim 1 is directed to a method that involves, among other things, provisioning at least one logical circuit through a first local access and transport area, a second local access and transport area, and an inter-exchange carrier. Independent claim 1 also recites that the at least one logical circuit includes first variable communication paths to route data through the first local access and transport area, second variable communication paths to route the data through the second local access and transport area, and fixed communication paths to route the data between the first local access and transport area, the second local access and transport area, and the inter-exchange carrier. The combination of Sibbitt et al. and Wilkes does not teach or suggest such a method.

As indicated in the official action, Sibbitt et al. do not teach or suggest provisioning at least one logical circuit through a first local access and transport area, a second local access and transport area, and an inter-exchange carrier, wherein the at least one logical circuit includes first variable communication paths to route data through the first local access and transport area, second variable communication paths to route the data through the second local access and transport area, and fixed communication paths to route the data between the first local access and transport area, the second local access and transport area, and the inter-exchange carrier. Office Action dated March 13, 2009, p. 4. The Applicants respectfully submit that Wilkes does not overcome this deficiency. Wilkes describes routing calls when a party wishes to make a call (See Wilkes, 3:37-50) but makes no mention of how or when provisioning occurs. Thus, while Wilkes does describe local access and transport areas (LATAs) connected by an inter-exchange carrier (IEC), Wilkes does not describe when or how provisioning of circuits occurs. Nor does Wilkes describe that such provisioning occurs without manual intervention as also recited in claim 1.

In addition, Wilkes does not teach or suggest at least one logical circuit along the LATAs and IEC that includes first variable communication paths to route data through a first LATA, second variable communication paths to route the data through a second LATA, and fixed communication paths to route the data between the first LATA, the second LATA, and the IEC as recited in claim 1.

In view of the foregoing, the Applicants respectfully submit that the combination of Sibbitt et al. and Wilkes does not teach or suggest the method of claim 1. Accordingly, the Applicants respectfully submit that independent claim 1 and all claims dependent thereon are in condition for allowance.

**B. Independent Claim 15**

The Applicants respectfully submit that independent claim 15 is also allowable over the combination of Sibbitt et al. and Wilkes. Independent claim 15 is directed to a system and recites, among other things, provisioning at least one logical circuit through a first local access and transport area, a second local access and transport area, and an inter-exchange carrier, wherein the at least one logical circuit includes first variable communication paths to route data through the first local access and transport area, second variable communication paths to route the data through the second local access and transport area, and fixed communication paths to route the data between the first local access and transport area, the second local access and transport area, and the inter-exchange carrier. The Applicants respectfully submit that the combination of Sibbitt et al. and Wilkes does not teach or suggest such a system. Accordingly, the Applicants respectfully submit that independent claim 15 and all claims dependent thereon are in condition for allowance.

**C. Independent Claim 26**

The Applicants respectfully submit that independent claim 26 is also allowable over the combination of Sibbitt et al. and Wilkes. Independent claim 26 is directed to a method

and recites, among other things, provisioning at least one logical circuit through a first local access and transport area, a second local access and transport area, and an inter-exchange carrier, wherein the at least one logical circuit includes first variable communication paths to route data through the first local access and transport area, second variable communication paths to route the data through the second local access and transport area, and fixed communication paths to route the data between the first local access and transport area, the second local access and transport area, and the inter-exchange carrier. The Applicants respectfully submit that the combination of Sibbitt et al. and Wilkes does not teach or suggest such a method. Accordingly, the Applicants respectfully submit that independent claim 26 and all claims dependent thereon are in condition for allowance.

### **III. Select Dependent Claims**

#### **A. Dependent Claim 27**

Claim 27 is dependent from independent claim 1. As discussed above, the Applicants respectfully submit that independent claim 1 is in condition for allowance. Thus, the Applicants submit that dependent claim 27 is also in condition for allowance as depending from claim 1.

In addition, the Applicants further submit that dependent claim 27 is also allowable because the applied art does not render claim 27 *prima facie* obvious as suggested in the official action. In the official action, claim 27 was rejected under 35 USC § 103 as unpatentable over Naven et al. (US 6,810,043) in combination with Sibbitt et al. and Wilkes. Contrary to the suggestion in the official action, the Applicants respectfully submit that Naven et al. do not teach or suggest selecting a first maintenance window to provision at least one logical circuit based on a first time of receipt being within a first time of receipt range corresponding to a first maintenance window; when a second time of receipt corresponding to the second customer order is within the first time of receipt range, selecting the first

maintenance window to provision a second logical circuit corresponding to a second customer order; and when the second time of receipt corresponding to the second customer order is not within the first time of receipt range, selecting a second maintenance window to provision the second logical circuit.

Naven et al. describe scheduling circuitry used to schedule cell transmissions. Naven et al., Abstract, 1:21-24, 1:50-52, 2:66-67 (“The VC is only serviced (i.e. a cell transmitted and the next cell transmission scheduled)...”). Naven et al. do not teach or suggest the provisioning of circuits. Further, provisioning of circuits would not be applicable to the Naven et al. system because cell transmissions occur on already provisioned circuits. Therefore, using the system of Naven et al. to schedule cell transmissions would require that such scheduling occur for previously provisioned circuits. Accordingly, the scheduling of Naven et al. does not involve provisioning. Dependent claim 27, on the other hand, involves provisioning first and second logical circuits.

In view of the foregoing, the Applicants respectfully submit that dependent claim 27 is in condition for allowance and withdrawal of the § 103 rejection therefrom is respectfully requested.

#### **B. Dependent Claims 29 and 31**

The Applicants respectfully submit that dependent claims 29 and 31 are also in condition for allowance for at least the reasons discussed above in connection with dependent claim 27. Accordingly, the Applicants respectfully request withdrawal of the § 103 rejections therefrom.

#### **IV. Conclusion**

In view of the foregoing, the Applicants respectfully submit that this application is in condition for allowance and request an early favorable action on the merits. If there are any

remaining matters that the Examiner would like to discuss, the Examiner is invited to contact the undersigned representative at the telephone number set forth below.

The Commissioner is authorized to charge any deficiency in the submitted payment toward payment of any fee due for the filing of this paper to deposit account number 50-2455.

In addition, if a petition for an extension of time under 37 CFR 1.136(a) is necessary to maintain the pendency of this case and is not otherwise requested in this case, the Applicants request that the Commissioner consider this paper to be a petition for an appropriate extension of time and hereby authorize the Commissioner to charge the fee as set forth in 37 CFR 1.17(a) corresponding to the needed extension of time to the above deposit account.

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